

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

LAURENCE F. PULGRAM (CSB No. 115163)  
lpulgram@fenwick.com  
JENNIFER L. KELLY (CSB No. 193416)  
jkelly@fenwick.com  
ILANA S. RUBEL (CSB No. 221517)  
irubel@fenwick.com  
GUINEVERE L. JOBSON (CSB No. 251907)  
gjobson@fenwick.com  
FENWICK & WEST LLP  
555 California Street  
San Francisco, CA 94104  
Telephone: (415) 875-2300  
Facsimile: (415) 281-1350

ERIC J. BALL (CSB No. 241327)  
eball@fenwick.com  
MATTHEW B. BECKER (CSB No. 291865)  
mbecker@fenwick.com  
FENWICK AND WEST LLP  
801 California Street  
Mountain View, CA 94041  
Telephone: (650) 988-8500  
Facsimile: (650) 938-5200

Attorneys for Plaintiff  
NEXTDOOR.COM, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

NEXTDOOR.COM, INC., a Delaware  
corporation,

Plaintiff,

v.

RAJ ABHYANKER, an individual,

Defendant.

Case No.: 3:12-cv-05667-EMC-NMC

**DECLARATION OF JENNIFER  
KELLY IN SUPPORT OF  
NEXTDOOR.COM, INC.'S MOTION  
FOR SUMMARY JUDGMENT ON  
NEXTDOOR.COM'S COUNTS II AND  
IV**

Date: October 16, 2014  
Time: 1:30 p.m.  
Courtroom: 5, 17<sup>th</sup> Floor  
Judge: Hon. Edward M. Chen

1 I, Jennifer L. Kelly, declare:

2 1. I am an attorney admitted to practice before this Court and am a partner in the law  
3 firm of Fenwick & West LLP, which represents Plaintiff Nextdoor.com, Inc. (“Nextdoor.com”) in  
4 this action. I submit this declaration in support of Nextdoor.com, Inc.’s Motion for Summary  
5 Judgment on Nextdoor.com’s Counts II and IV. I have personal knowledge of the matters set  
6 forth in this declaration and, if called upon to do so, could and would testify competently as to the  
7 matters set forth herein.

8 2. Attached hereto as **Exhibit A** are true and correct copies of excerpts of the  
9 transcript of Raj Abhyanker’s (“Abhyanker”) deposition taken in this action on June 6, 7, and 11,  
10 2014, and August 4, 2014.

11 3. On April 16, 2014, Nextdoor.com served a Rule 11 motion on Abhyanker, targeted  
12 at Abhyanker’s allegations in his Supplemental Statement Regarding His Prior Use and Common  
13 Law Rights in the Nextdoor Trademark and Errata to his Supplemental Statement (Dkt. Nos. 141  
14 and 153). Specifically, our motion argued that Abhyanker’s allegation that he used the  
15 NEXTDOOR mark on his www.edirectree.com website (“eDirectree site”) “years before”  
16 Nextdoor.com launched its site in October 2011 was false and based off of fabricated and  
17 misrepresented documents, and that Abhyanker had engaged in pervasive spoliation of essential  
18 evidence related to the authenticity of his claims.

19 4. On May 5, 2014, Bruno Tarabichi, at the time, counsel for Abhyanker, sent a letter  
20 to me expressing Abhyanker’s intent to withdraw his trademark infringement claim based on his  
21 asserted common law rights in the NEXTDOOR trademark, with prejudice, which he did via the  
22 Stipulation and Proposed Order for Partial Dismissal and Declaratory Judgment and the Proposed  
23 Partial Final Judgment Pursuant to Fed. R. Civ. P. 54(b) and 58(a) filed on May 8, 2014 (Dkt.  
24 Nos. 188 and 189) and the Amended Stipulation and Proposed Order for Partial Dismissal and  
25 Declaratory Judgment and the Proposed Partial Final Judgment Pursuant to Fed. R. Civ. P. 54(b)  
26 and 58(a) filed on May 14, 2014 (Dkt. Nos. 190 and 191). The Amended Stipulation and  
27 Proposed Order and Partial Final Judgment were signed by the Court on May 16, 2014. *See* Dkt.

1 Nos. 192 & 193.

2 5. Attached hereto as **Exhibit B** is a true and correct copy of a January 14, 2011 e-  
3 mail sent by Nextdoor.com's CEO Nirav Tolia to "everyone@hedgehoglabs.net, Bill Gurley, and  
4 Jason Pressman, together with its attachment, produced by Nextdoor.com with the Bates range  
5 NEXTDOOR00002121 through NEXTDOOR00002122, as well as a high-resolution copy of the  
6 jpeg displayed in Bates number NEXTDOOR00002122.

7 6. Attached hereto as **Exhibit C** is a true and correct copy of Deposition Exhibit 134  
8 from the Abhyanker deposition, which is a printout of the www.nextdoor.cm webpage taken on  
9 February 9, 2012, and was authenticated by Abhyanker during his deposition, as reflected in  
10 Abhyanker Depo. Tx. at 530:2-531:4 (included in the Abhyanker deposition transcript excerpts,  
11 Exhibit A).

12 7. Attached hereto as **Exhibit D** are true and correct copies of screenshots, taken at  
13 my direction on November 1, 2012, of the "About," "Privacy," "Terms," and "Contact" pages  
14 from the www.nextdoor.cm domain. These screenshots depict these pages of the site as of that  
15 date.

16 8. Attached hereto as **Exhibit E** is a true and correct copy of Deposition Exhibit 135  
17 from the Abhyanker deposition, which is a printout from the Internet Archive webpage showing  
18 that on February 16, 2012, the www.nextlawn.com URL redirected to the same location as  
19 www.nextdoor.cm URL (http://114.143.101.211:8302/). When asked about this exhibit during  
20 his deposition, Abhyanker testified that this redirection did in fact occur, as reflected in  
21 Abhyanker Depo. Tx. at 533:13-534:13 (included in the Abhyanker deposition transcript  
22 excerpts, Exhibit A).

23 9. Attached hereto as **Exhibit F** is a true and correct copy of Deposition Exhibit 177  
24 from the Abhyanker deposition, which is a printout from the www.nextdoor.cm webpage taken  
25 on March 5, 2012, and was authenticated by Abhyanker during his deposition, as reflected in  
26 Abhyanker Depo. Tx. at 776:14-779:6 (included in the Abhyanker deposition transcript excerpts,  
27 Exhibit A).

1           10.     On September 19, 2013, Abhyanker served supplemental objections and responses  
2 to Nextdoor.com's First Set of Interrogatories, and separately provided his verification thereto on  
3 October 8, 2013. Attached hereto as **Exhibit G** is a true and correct copy of Abhyanker's First  
4 Supplemental Objections and Responses to Nextdoor.com's First Set of Interrogatories, together  
5 with the separately served verification.

6           11.     In response to Nextdoor.com's Interrogatory No. 7 (**Exhibit G**), requesting  
7 Abhyanker to "Identify all products or services that you have marketed or offered in connection  
8 with the www.nextdoor.cm domain, including documents identifying those products or services,"  
9 Abhyanker stated that he "used the nextdoor.cm domain name for a local neighborhood  
10 commerce website to allow users to find restaurant deals in their neighborhood," and referred  
11 Nextdoor.com to documents Bates numbered RA000114-124. Attached hereto as **Exhibit H** is a  
12 true and correct copy of documents produced by Abhyanker at Bates range RA000114 through  
13 RA000124.

14           12.     In response to Nextdoor.com's Interrogatory No. 9 (**Exhibit G**), requesting  
15 Abhyanker to "Identify all uses of the term 'nextdoor,' or any variation thereof (including as a  
16 mark), in connection with the www.nextdoor.cm domain, including documents showing this use,"  
17 Abhyanker stated that "Nextdoor appeared on the nextdoor.cm website," and referred  
18 Nextdoor.com to documents Bates numbered RA000114-124 (**Exhibit H**).

19           13.     In response to Nextdoor.com's Interrogatory No. 13 (**Exhibit G**), requesting  
20 Abhyanker to "Identify all products or services that you have marketed or offered in connection  
21 with the www.eatbid.com website, including documents identifying these products and services,"  
22 Abhyanker stated that "the eatbid.com website was a neighborhood commerce website and social  
23 network to connect neighbors to restaurants and eating establishments around them," and referred  
24 Nextdoor.com to documents Bates numbered RA000125-128. Attached hereto as **Exhibit I** is a  
25 true and correct copy of documents produced by Abhyanker at Bates range RA000125 through  
26 RA000128.

27           14.     On May 15 2014, Abhyanker served his objections and responses to  
28

1 Nextdoor.com's Second Set of Interrogatories, along with his verification thereof. In response to  
 2 Nextdoor.com's Interrogatory No. 20, requesting Abhyanker to "Describe in detail all uses made  
 3 of the www.fatdoor.us domain during each year from 2007 to the present, including without  
 4 limitation any goods and services offered, the trademarks (if any) used, and any users of the  
 5 goods and services," Abhyanker responded, in relevant part, that he repurchased the  
 6 www.fatdoor.us domain "on or about February 8, 2012, and the website has been accessible ever  
 7 since." Attached hereto as **Exhibit J** is a true and correct copy of Abhyanker's Objections and  
 8 Responses to Nextdoor.com's Second Set of Interrogatories.

9 15. As noted above, Nextdoor.com filed an Amended Stipulation for Partial Dismissal  
 10 and Declaratory Judgment (Dkt. 190) on May 14, 2014, which resolved any dispute over the  
 11 priority of use and ownership of the NEXTDOOR mark. Specifically, the parties stipulated that  
 12 Abhyanker dismissed with prejudice his Third and Fourth Counterclaims in his Second Amended  
 13 Counterclaims with respect to the NEXTDOOR mark. The parties also stipulated that judgment  
 14 should be entered on Count 1 of Nextdoor.com's Complaint (which sought a declaratory  
 15 judgment that it has established trademark rights, including priority of use, of the NEXTDOOR  
 16 mark in the field of online social networking). In response, the Court entered an Order for Partial  
 17 Dismissal and Declaratory Judgment (Dkt. 192), dismissing Abhyanker's claims to priority of use  
 18 and ownership of the NEXTDOOR mark with prejudice; declaring that Nextdoor.com, Inc. owns  
 19 trademark rights in and has priority of use of the NEXTDOOR mark in the field of online social  
 20 networking; and enjoining Abhyanker and those in concert with him from using the NEXTDOOR  
 21 mark. *See also* Dkt. 193 (Partial Final Judgment entered on May 16, 2014 ordering, adjudging  
 22 and decreeing same).

23 16. After the Court entered its Partial Final Judgment (Dkt. 193) enjoining Abhyanker  
 24 and those in concert with him from using the NEXTDOOR mark, he continued to incorporate the  
 25 NEXTDOOR mark into various websites he controlled. Thus, on May 21, 2014, my colleague  
 26 Guinevere Jobson, also counsel of record for Nextdoor.com in this litigation, sent Abhyanker's  
 27 counsel a letter requesting compliance with the Court's order. Attached hereto as **Exhibit K** is a  
 28

1 true and correct copy of that letter. Counsel for Abhyanker did not respond.

2 17. Thus, on May 23, 2014, Ms. Jobson followed up with Abhyanker's counsel by  
3 email, again requesting compliance with the Court's order. Attached hereto as **Exhibit L** is a true  
4 and correct copy of that email.

5 18. By May 24, 2014, Abhyanker still had not removed all references to the  
6 NEXTDOOR mark from the various websites he controlled. Accordingly, Ms. Jobson sent a  
7 further e-mail, together with screenshots taken from websites Abhyanker controlled,  
8 demonstrating continued incorporation of the NEXTDOOR mark onto those sites. Attached  
9 hereto as **Exhibit M** is a true and correct copy of that e-mail, together with its attachments.  
10 Abhyanker finally took action within a few days after Ms. Jobson's follow up email of May 24,  
11 2014, removing references to the NEXTDOOR mark from his various websites.

12 19. Attached hereto as **Exhibit N** is a true and correct copy of Deposition Exhibit 74  
13 from the Abhyanker deposition, which was the February 1, 2007 Assignment Agreement between  
14 Abhyanker and Fatdoor, Inc. that was produced in this action by third party Goodwin Procter in  
15 response to subpoena with the Bates range GP000657 through GP000661. This Assignment  
16 Agreement was authenticated by Abhyanker at his deposition, as reflected in Abhyanker Depo.  
17 Tx. at 139:18-139:25 (included in the Abhyanker deposition transcript excerpts, Exhibit A).

18 20. Attached hereto as **Exhibit O** is a true and correct copy of Abhyanker's Fatdoor,  
19 Inc. termination agreement dated November 15, 2007, produced by Abhyanker at Bates range  
20 RA000018 through RA000021.

21 21. On February 27, 2014 Abhyanker served his objections and responses to  
22 Nextdoor.com's First Set of Requests for Admission. Attached hereto as **Exhibit P** is a true and  
23 correct excerpted copy of Abhyanker's Responses and Objections to Nextdoor.com's First Set of  
24 Requests for Admission, which includes his responses to RFA No. 5.

25 22. Attached hereto as **Exhibit Q** is a true and correct copy of the October 15, 2007  
26 Whois registration record for the www.fatdoor.us domain name, which was printed out at my  
27 direction from the www.domaintools.com webpage on April 22, 2014.

23. Attached hereto as **Exhibit R** is a true and correct copy of the February 8, 2012 Whois registration record for the www.fatdoor.us domain name acquisition, which was printed out at my direction from the www.domaintools.com webpage on March 6, 2012.

24. On February 14, 2014, I directed a member of Fenwick & West's staff to search the United States Patent and Trademark Office's ("USPTO") online database for the mark FATDOOR. According to the USPTO's records, the FATDOOR mark was abandoned on November 10, 2008. The USPTO search results displaying this November 10, 2008 abandonment date were produced by Nextdoor.com at Bates number NEXTDOOR00003241, and a true and correct copy of them are attached hereto as **Exhibit S**.

25. Attached hereto as **Exhibit T** is a true and correct copy of the affidavit of Christopher Butler on behalf of the Internet Archive, which on the fourth page reflects the eDirectree website home page as it existed on October 10, 2008, with a cluster of various words, including the words "2", "fatdoor", "Democrat", "basketball", "team", "Music", "Silicon", "work", "Obama", "Mountain", "Family", "of" and others.

26. Attached hereto as **Exhibit U** is a true and correct print-out of the eDirectree website and its content that I caused to be captured on February 16, 2012, with a cluster of various words, including the words "work", "friends", "alumni", "President", "team", "drawing", "Kenya", "sister" and others.

27. Attached hereto as **Exhibit V** is a true and correct copy of Deposition Exhibit 137 from the Abhyanker deposition, which is a printout from the Internet Archive on June 4, 2014, showing what the www.edirectree.com "Groups by Tag" page looked like on February 7, 2008. The contents of that page were authenticated by Abhyanker during his deposition, as reflected in Abhyanker Depo. Tx. at 543:24-544:8 (included in the Abhyanker deposition transcript excerpts, Exhibit A). In this exhibit, the word "fatdoor" appears in red text, which indicates that the link was previously clicked on and/or viewed.

28. Attached hereto as **Exhibit W** is a true and correct copy of Deposition Exhibit 85 from the Abhyanker deposition, which is an email from Abhyanker to Sergio Monsalve,



1 Alessandro Biral, Bill Harris, Daniel Hansen, and others. This email was sent on November 13,  
 2 2012, and produced by third party Daniel Hansen in response to subpoena as Bates range  
 3 DH00122-123. This email was authenticated by Abhyanker during his deposition, as reflected in  
 4 Abhyanker Depo. Tx. at 216:5-216:16 (included in the Abhyanker deposition transcript excerpts,  
 5 Exhibit A).

6 29. Attached hereto as **Exhibit X** are true and correct copies of excerpts of the  
 7 transcript of the deposition of Daniel Hansen taken in this action on May 27, 2014.

8 30. Attached hereto as **Exhibit Y** is a true and correct copy of Deposition Exhibit 84  
 9 from the Abhyanker deposition, which is an email from Daniel Hansen to Raj Abhyanker, Jeff  
 10 Drazan, and Bill Harris. This email was sent on November 11, 2012, and produced by Daniel  
 11 Hansen as Bates range DH00114-115. This email was authenticated by Abhyanker during his  
 12 deposition, as reflected in Abhyanker Depo. Tx. at 213:12-213:19 (included in the Abhyanker  
 13 deposition transcript excerpts, Exhibit A).

14 31. Attached hereto as **Exhibit Z** is a true and correct copy of Deposition Exhibit 82  
 15 from the Abhyanker deposition, which is an email from Jeff Drazan to Raj Abhyanker, Daniel  
 16 Hansen, and Bill Harris. This email was sent on November 11, 2012, and produced by Daniel  
 17 Hansen as Bates no. DH00112. This email was authenticated by Abhyanker during his  
 18 deposition, as reflected at Abhyanker Depo. Tx. at 206:7-206:16 (included in the Abhyanker  
 19 deposition transcript excerpts, Exhibit A).

20 32. Attached hereto as **Exhibit AA** is a true and correct copy of Deposition Exhibit 86  
 21 from the Abhyanker Deposition, which is an email from Raj Abhyanker to Sergio Monsalve,  
 22 Daniel Hansen, and Bill Harris, sent on November 9, 2013. This email was produced by Daniel  
 23 Hansen as Bates range DH01795-1796. This email was authenticated by Abhyanker at his  
 24 deposition, as reflected in Abhyanker Depo. Tx. at 222:7-222:17 (included in the Abhyanker  
 25 deposition transcript excerpts, Exhibit A).

26 33. Attached hereto as **Exhibit BB** is a true and correct copy of Deposition Exhibit 87  
 27 from the Abhyanker deposition, which is an email from Raj Abhyanker to Babar Rana sent on



1 November 9, 2013. This email was produced by third party Babar Rana in response to subpoena  
 2 as Bates range RANA-NXT0375-378. This email was authenticated by Abhyanker during his  
 3 deposition, as reflected in Abhyanker Depo. Tx. at 224:7-224:25 (included in the Abhyanker  
 4 deposition transcript excerpts, Exhibit A).

5 34. Attached hereto as **Exhibit CC** is a true and correct copy of Deposition Exhibit  
 6 140 from the Abhyanker deposition, which is the Fatdoor.com Privacy Policy page, printed from  
 7 the “new” Fatdoor.com website on June 7, 2014, and authenticated by Abhyanker during his  
 8 deposition as reflected in Abhyanker Depo. Tx. at 550:21-551:18 (included in the Abhyanker  
 9 deposition transcript excerpts, Exhibit A).

10 I declare under penalty of perjury under the laws of the United States that the foregoing is  
 11 true and correct and that this declaration was executed on September 11, 2014, in San Francisco,  
 12 California.

13 By: /s/ Jennifer Kelly  
 14 Jennifer Kelly

FENWICK & WEST LLP  
 ATTORNEYS AT LAW  
 SAN FRANCISCO